

EXHIBIT CX

[PUBLIC VERSION]

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF WYOMING

----- :
CUSTODIA BANK, INC., :
 :
Plaintiff, :
 : Case No.
vs. : 1:22-cv-00125-SWS
 :
FEDERAL RESERVE BOARD OF :
GOVERNORS and FEDERAL RESERVE :
BANK OF KANSAS CITY, :
 :
Defendants. :
----- :

CONFIDENTIAL DEPOSITION OF
PETER CONTI-BROWN, PH.D.

DATE: Thursday, December 14, 2023
TIME: 8:09 a.m.
LOCATION: King & Spalding, LLP
1700 Pennsylvania Avenue, N.W.
Washington, D.C. 20006

REPORTED BY: Erick M. Thacker
Reporter, Notary

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1 MCA, must get access to an account, right?

2 A All legally eligible depository
3 institutions, the intent of the framers of the
4 MCA was to give them access on equal terms to
5 Federal Reserve services, yes.

6 Q Okay. And that once they have an
7 account, you're not precluding the possibility
8 that the Federal Reserve can conduct a risk
9 assessment concerning each institution, right?

10 A That's -- it's correct that I'm
11 asserting that the Federal Reserve's risk
12 assessments pursuant to regulation is consistent
13 with the Fed's practices after the passage of the
14 Monetary Control Act.

15 Q But to the extent that they restricted
16 use of any service in perpetuity, that would be
17 inconsistent with the intent behind the Monetary
18 Control Act? That's your opinion?

19 A The --

20 MR. SCARBOROUGH: Objection.

21 THE WITNESS: My opinion is that the
22 intent of the framers of the Monetary Control Act

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1 was not to give the Federal Reserve the authority
2 to impose membership entrance standards for
3 federal -- use of Federal Reserve services as it
4 had done prior to 1980, after the passage of that
5 act.

6 BY MR. MICHAELSON

7 Q Okay. So The Narrow Bank is a
8 state-chartered nonmember bank, right?

9 A That's right.

10 Q Like Custodia, right?

11 A Chartered by the state of Connecticut,
12 where Custodia was chartered by Wyoming.

13 Q Right. But both are state-chartered
14 nonmember banks, right?

15 A That's right.

16 Q And so it's your opinion that the
17 Federal Reserve -- that the Monetary Control
18 Act's intent was to force the Federal Reserve to
19 give entities like that access to services
20 irrespective -- without the Federal Reserve being
21 powered to conduct a risk assessment?

22 A My opinion is that the intent of the

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1 framers of the MCA was to require the Federal
2 Reserve to equalize access to its service
3 irrespective of Fed membership and that the
4 process for determining Fed membership, which
5 could stay consistent both before and after 1980,
6 was not to be turned into the same process for
7 granting that access, which was to be on equal
8 terms to all legally eligible depository
9 institutions.

10 Q In your view, is it consistent with the
11 Monetary Control Act for the Federal Reserve to
12 deny access to a -- both a federally-chartered
13 and state-chartered institution that are
14 identical?

15 MR. SCARBOROUGH: Objection to form.

16 THE WITNESS: My opinion is that that
17 would not constitute the access intended by the
18 federal -- by the framers of the Monetary Control
19 Act. The intent of the framers of the Monetary
20 Control Act was not that the Federal Reserve
21 could act with whatever whim that it preferred
22 for so long as it did so consistently across

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1 Q Okay. And that would include payment
2 of interest on excess reserves?

3 A That would include the master account.

4 Q Would it include payment of interest on
5 excess reserves?

6 A I'd regard the application of payment
7 on interest reserves and whether it fits within
8 the statutory parameters of Section 248a to be a
9 legal question, which the Court should decide and
10 on which I offer no opinion.

11 Q So you're -- you're -- you're not
12 offering an opinion on -- so it's potentially
13 consistent with the intent behind the MCA for the
14 Federal Reserve to grant a master account to
15 The Narrow Bank, but refuse to pay interest on
16 excess reserves?

17 A I don't offer an opinion about -- on
18 that -- on the specific legal interpretation of
19 what the -- of what would constitute additional
20 priced services and whether the interest on
21 reserves would -- would constitute those
22 services.

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1 I do express the opinion that if the
2 Federal Reserve in granting a master account so
3 imposes conditions on its use as to render it
4 inert that that would be inconsistent with the
5 intent of the framers of the MCA. Whether, in
6 this specific instance, the payment on interest
7 on excess reserves would -- would render that
8 account inoperable is not a question on which I
9 offer an opinion.

10 Q But you understand that TNB's business
11 model was built around receipt of interest on
12 excess reserves, right?

13 A I don't offer an opinion on the
14 business model of The Narrow Bank in this case.

15 Q Do you know if any employees of the
16 Federal Reserve Bank of New York were inclined to
17 the grant The Narrow Bank's request for a master
18 account?

19 A I don't have an opinion to offer about
20 the inclinations of individual members of the --
21 or staffers or employees of the Federal Reserve
22 Bank of New York.